

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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ERICK BERG,

Plaintiff,

Civil Action No.:  
1:13-cv-2694

v.

**ANSWER**

CAPITAL ONE FINANCIAL CORP., AETNA  
LIFE INSURANCE COMPANY, and CAPITAL  
ONE SHORT TERM MANAGED INCOME  
PROTECTION BENEFITS PLAN,

Defendants.

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Defendants, AETNA LIFE INSURANCE COMPANY (“Aetna”) and the Capital One Short Term Managed Income Protection Benefit Plan (the “Plan”), by and through their attorneys, SEDGWICK LLP, as and for their Answer to plaintiff’s Complaint dated April 19, 2013, respectfully set forth the following upon information and belief:

FIRST: Deny each and every allegation contained in paragraph “1” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court.

SECOND: Deny each and every allegation contained in paragraph “2” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admit that plaintiff’s claim for short term disability (“STD”) benefits against Aetna and the Plan arises under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, (“ERISA”) 29 U.S.C. § 1132(a)(1)(B).

THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “3” of the plaintiff’s Complaint as alleged and respectfully refers all questions of law to the Honorable Court, except admits this court has subject matter jurisdiction over the claims asserted in plaintiff’s cause of action against Aetna and the Plan pursuant to 28 U.S.C. §1331 because it involves a federal question under ERISA.

FOURTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “4” of the plaintiff’s Complaint as alleged and

respectfully refers all questions of law to the Honorable Court, except denies that the amount in controversy on plaintiff's fourth causes of action against Aetna and the Plan exceeds \$75,000.

FIFTH: Admit the truth of each and every allegation contained in paragraph "5" of the plaintiff's Complaint.

SIXTH: Deny each and every allegation contained in paragraph "6" of the plaintiff's Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admits Plaintiff Erick Berg is a former employee of Capital One.

SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "7" of the plaintiff's Complaint as alleged and respectfully refers all questions of law to the Honorable Court.

EIGHTH: Deny each and every allegation contained in paragraph "8" of the plaintiff's Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admits Defendant Aetna is a corporation organized and existing under the laws of the State of Connecticut, with its headquarters located at 151 Farmington Avenue, Hartford, Connecticut 06156 and that at all times relevant herein, Aetna acted as the "claim fiduciary" and "claim administrator" for the Plan only when and to the extent that it rendered discretionary determinations concerning Plaintiff's claim for Plan benefits.

NINTH: Deny each and every allegation contained in paragraph "9" of the plaintiff's Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admits that the Plan grants Aetna full discretionary authority to make all benefit claim determinations under the Plan and that Aetna administered all benefit claims under the Plan.

TENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "10" of the plaintiff's Complaint.

ELEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "11" of the plaintiff's Complaint.

TWELFTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "12" of the plaintiff's Complaint.

THIRTEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “13” of the plaintiff’s Complaint.

FOURTEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “14” of the plaintiff’s Complaint.

FIFTEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “15” of the plaintiff’s Complaint.

SIXTEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “16” of the plaintiff’s Complaint.

SEVENTEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “17” of the plaintiff’s Complaint.

EIGHTEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “18” of the plaintiff’s Complaint.

NINETEENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “19” of the plaintiff’s Complaint.

TWENTIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “20” of the plaintiff’s Complaint.

TWENTY-FIRST: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “21” of the plaintiff’s Complaint.

TWENTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “22” of the plaintiff’s Complaint.

TWENTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “23” of the plaintiff’s Complaint.

TWENTY-FOURTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “24” of the plaintiff’s Complaint.

TWENTY-FIFTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “25” of the plaintiff’s Complaint.

TWENTY-SIXTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “26” of the plaintiff’s Complaint.

TWENTY-SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “27” of the plaintiff’s Complaint.

TWENTY-EIGHTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “28” of the plaintiff’s Complaint.

TWENTY-NINTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “29” of the plaintiff’s Complaint.

THIRTIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “30” of the plaintiff’s Complaint.

THIRTY-FIRST: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “31” of the plaintiff’s Complaint.

THIRTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “32” of the plaintiff’s Complaint.

THIRTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “33” of the plaintiff’s Complaint.

THIRTY-FOURTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “34” of the plaintiff’s Complaint.

THIRTY-FIFTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “35” of the plaintiff’s Complaint including sub-parts A, B & C thereof.

THIRTY-SIXTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “36” of the plaintiff’s Complaint.

THIRTY-SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “37” of the plaintiff’s Complaint.

THIRTY-EIGHTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “38” of the plaintiff’s Complaint.

THIRTY-NINTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “39” of the plaintiff’s Complaint.

FORTIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “40” of the plaintiff’s Complaint.

FORTY-FIRST: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “41” of the plaintiff’s Complaint.

FORTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “42” of the plaintiff’s Complaint.

FORTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “43” of the plaintiff’s Complaint.

FORTY-FOURTH: Deny each and every allegation contained in paragraph “44” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court and respectfully refer to the administrative record pertaining to plaintiff’s claim for STD benefits kept and maintained by Aetna in the regular course and scope of its business for the contents thereof as to the facts and circumstances recorded therein, except admit that plaintiff applied for STD benefits under the Plan.

FORTY-FIFTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “45” of the plaintiff’s Complaint.

FORTY-SIXTH: Deny each and every allegation contained in paragraphs “46” of the plaintiff’s Complaint as alleged.

FORTY-SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “47” of the plaintiff’s Complaint.

FORTY-EIGHTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “48” of the plaintiff’s Complaint.

FORTY-NINTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “49” of the plaintiff’s Complaint as alleged except admit plaintiff was terminated from his employment effective November 13, 2012.

FIFTIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “50” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court and respectfully refer to the November 16, 2012 letter, which speaks for itself.

FIFTY-FIRST: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “51” of the plaintiff’s Complaint.

FIFTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “52” of the plaintiff’s Complaint.

FIFTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “53” of the plaintiff’s Complaint and respectfully refer all questions of law to the Honorable Court.

FIFTY-FOURTH: Deny each and every allegation contained in paragraph “54” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court and respectfully refer to the administrative record pertaining to plaintiff’s claim for STD benefits kept and maintained by Aetna in the regular course and scope of its business for the contents thereof as to the facts and circumstances recorded therein, except admit that plaintiff applied for STD benefits under the Plan, except admit that by letter dated December 1, 2012, Aetna notified Mr. Berg that his claim for short term disability benefits was denied as a result of his termination effective November 13, 2012.

FIFTY-FIFTH: Deny each and every allegation contained in paragraph “55” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court and respectfully refer to the administrative record pertaining to plaintiff’s claim for STD benefits kept and maintained by Aetna in the regular course and scope of its business for the contents thereof as to the facts and circumstances recorded therein, except admit that plaintiff submitted additional information in support of his claim on appeal.

FIFTY-SIXTH: Deny each and every allegation contained in paragraph “56” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court and respectfully refer to the administrative record pertaining to plaintiff’s claim for STD benefits kept and maintained by Aetna in the regular course and scope of its business for the contents thereof as to the facts and circumstances recorded therein, except admit that by letter dated March 7, 2013 Aetna advised plaintiff of its decision to uphold its original determination to deny his claim for benefits under the Plan.

FIFTY-SEVENTH: Deny each and every allegation contained in paragraphs “57” of the plaintiff’s Complaint.

FIFTY-EIGHTH: Deny each and every allegation contained in paragraphs “58” of the plaintiff’s Complaint.

FIFTY-NINTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “59” of the plaintiff’s Complaint as alleged and respectfully refers all questions of law to the Honorable Court.

SIXTIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “60” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

**AS AND FOR AN ANSWER TO PLAINTIFF’S FIRST CAUSE OF ACTION**

SIXTY-FIRST: In response to paragraph “61” of the plaintiff’s Complaint, defendants repeat, reiterate and reallege each and every response to the allegations contained in paragraphs “FIRST” through “SIXTIETH:” inclusive, with the same force and effect as if more fully set forth at length herein.

SIXTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “62” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “63” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-FOURTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “64” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-FIFTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “65” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-SIXTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “66” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “67” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-EIGHTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “68” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SIXTY-NINTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “69” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

**AS AND FOR AN ANSWER TO PLAINTIFF’S SECOND CAUSE OF ACTION**

SEVENTIETH: In response to paragraph “70” of the plaintiff’s Complaint, defendants repeat, reiterate and reallege each and every response to the allegations contained in paragraphs “FIRST” through “SIXTY-NINTH:” inclusive, with the same force and effect as if more fully set forth at length herein.

SEVENTY-FIRST: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “71” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.



SEVENTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “72” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SEVENTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “73” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SEVENTY-FOURTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “74” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SEVENTY-FIFTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “75” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SEVENTY-SIXTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “76” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

SEVENTY-SEVENTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “77” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

**AS AND FOR AN ANSWER TO PLAINTIFF’S THIRD CAUSE OF ACTION**

SEVENTY-EIGHTH: In response to paragraph “78” of the plaintiff’s Complaint, defendants repeat, reiterate and reallege each and every response to the allegations contained in paragraphs “FIRST” through “SEVENTY-SEVENTH:” inclusive, with the same force and effect as if more fully set forth at length herein.

SEVENTY-NINTH: Deny each and every allegation contained in paragraph “79” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admits that plaintiff applied for leave under the FMLA.

EIGHTIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “80” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

EIGHTY-FIRST: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “81” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

EIGHTY-SECOND: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “82” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

EIGHTY-THIRD: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “83” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

EIGHTY-FOURTH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “84” of the plaintiff’s Complaint and respectfully refers all questions of law to the Honorable Court.

**AS AND FOR AN ANSWER TO PLAINTIFF’S FOURTH CAUSE OF ACTION**

EIGHTY-FIFTH: In response to paragraph “85” of the plaintiff’s Complaint, defendants repeat, reiterate and reallege each and every response to the allegations contained in paragraphs “FIRST” through “EIGHTY-FOURTH:” inclusive, with the same force and effect as if more fully set forth at length herein.

EIGHTY-SIXTH: Deny each and every allegation contained in paragraph “86” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court and respectfully refer to the administrative record pertaining to plaintiff’s claim for STD benefits kept and maintained by Aetna in the regular course and scope of its business for the contents thereof as to the facts and circumstances recorded therein, except admit that Plaintiff was a participant in the Plan within the meaning of Section 3(7) of ERISA, 29 U.S.C. §1002(7) until his termination from employment effective November 13, 2012.

EIGHTY-SEVENTH: Admit the truth of each and every allegation contained in paragraph “87” of the plaintiff’s Complaint.

EIGHTY-EIGHTH: Deny each and every allegation contained in paragraph “88” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admit that Aetna acted as the claim administrator for the Plan and acted as a claim fiduciary only when and to the extent that it rendered discretionary determinations of benefit claims under the Plan.

EIGHTY-NINTH: Deny each and every allegation contained in paragraph “89” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admit that Capital One was plaintiff’s “employer” within the meaning of ERISA §3(5).

NINETIETH: Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs “90” of the plaintiff’s Complaint.

NINETY-FIRST: Deny each and every allegation contained in paragraph “91” of the plaintiff’s Complaint as alleged and respectfully refer all questions of law to the Honorable Court, except admit that Plaintiff was employed by Capital One and, as an employee, was eligible for coverage for STD under the Plan while so employed.

NINETY-SECOND: Deny each and every allegation contained in paragraphs “92” of the plaintiff’s Complaint.

NINETY-THIRD: Deny each and every allegation contained in paragraphs “93” of the plaintiff’s Complaint.

NINETY-FOURTH: Admit the truth of each and every allegation contained in paragraph “94” of the plaintiff’s Complaint.

NINETY-FIFTH: Admit the truth of each and every allegation contained in paragraph “95” of the plaintiff’s Complaint.

NINETY-SIXTH: Admit the truth of each and every allegation contained in paragraph “96” of the plaintiff’s Complaint.

NINETY-SEVENTH: Deny each and every allegation contained in paragraphs “97” of the plaintiff’s Complaint.

NINETY-EIGHTH: Deny each and every allegation contained in paragraphs “98” of the plaintiff’s Complaint.

NINETY-NINTH: Deny each and every allegation contained in paragraphs “99” of the plaintiff’s Complaint.

ONE HUNDREDTH: Deny each and every allegation contained in paragraphs “100” of the plaintiff’s Complaint.

**OBJECTION TO JURY DEMAND**

ONE HUNDRED FIRST: Defendants object to plaintiff’s Jury Demand because he is not entitled to a trial by jury of any claim asserted against these answering defendants. DeFelice v. International Assurance Co. of New York, 112 F.3d 61 (2d Cir. 1997); Sullivan v. LTV Aerospace and Defense Co., 82 F.3d 1251 (2d Cir. 1996).

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

ONE HUNDRED SECOND: This action and each purported claim asserted therein fails to state facts sufficient to constitute a cognizable claim for relief against defendants.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

ONE HUNDRED THIRD: The claims for which plaintiff seeks recovery are not payable under the terms of the Plan in effect during the time period of the pertinent allegations in plaintiff’s Complaint.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

ONE HUNDRED FOURTH: Defendants acted responsibly and in good faith at all times material herein based on relevant facts and circumstances known by it at the time it so acted and pursuant to the Plan. Accordingly, plaintiff is barred from recovery for his claims in this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

ONE HUNDRED FIFTH: All actions about which plaintiff complains were either required or permitted by applicable law.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

ONE HUNDRED SIXTH: Aetna's decision-making was not arbitrary or capricious and therefore, the Court cannot disturb Aetna's determination concerning plaintiff's claims.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

ONE HUNDRED SEVENTH: Plaintiff has not properly pled a claim for attorneys' fees under ERISA.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

ONE HUNDRED EIGHTH: Defendant Aetna, as claim fiduciary for the governing welfare benefit plan, is granted complete authority to review all denied claims for benefits under the Plan and discretionary authority to determine: whether and to what extent participants are entitled to benefits; and to construe the terms of the Plan; and Aetna is deemed to have properly exercised this authority unless it abuses its discretion by acting arbitrarily and capriciously. Aetna's decision-making was not arbitrary or capricious and therefore, the Court cannot disturb Aetna's determination concerning plaintiff's claims.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

ONE HUNDRED NINTH: The Court's review of plaintiff's claim against defendants is limited to the correspondence, notes and documents contained in the administrative record kept and maintained by Aetna in the regular course of its business.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

ONE HUNDRED TENTH: Plaintiff's claim is limited by the terms, conditions, limitations, exclusions, and other provisions of the Plan documents.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

ONE HUNDRED ELEVENTH: To the extent (and without admitting that) the plaintiff was entitled to benefits as of the date Aetna determined he was not entitled to receive further benefits, such entitlement does not mean that the plaintiff has an entitlement to unlimited future benefits after that date given, *inter alia*, the possibility for future recovery from any alleged disabling conditions (the existence of which is denied), as well as the affect of different Plan requirements, exclusions and/or limitations.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

ONE HUNDRED TWELFTH: To the extent (and without admitting that) the plaintiff was entitled to benefits as of the date Aetna determined he was not entitled to receive further benefits, his monthly benefit under the Plan must be reduced by any “other income” benefits he was eligible to receive.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

ONE HUNDRED THIRTEENTH: Plaintiff’s claims for consequential damages, punitive damages and other forms of legal relief are completely preempted by ERISA.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

ONE HUNDRED FOURTEENTH: To the extent necessary, defendants deny all allegations appearing as topic headings or subheadings in plaintiff’s Complaint.

**WHEREFORE**, defendants Aetna and the Plan pray:

1. That the action be dismissed, or that judgment be entered in favor of defendants, Aetna and the Plan and against plaintiff;
2. That defendants, Aetna and the Plan, be awarded costs of suit incurred herein;
3. That defendants, Aetna and the Plan, be awarded reasonable attorney’s fees; and
4. That defendants, Aetna and the Plan, be awarded such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
June 28, 2013

Respectfully submitted,

s/

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MICHAEL H. BERNSTEIN (MB-0579)

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*Attorneys for Defendants*

*Aetna Life Insurance Company and Capital One Short Term  
Managed Income Protection Benefits Plan*

TO:

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**CERTIFICATE OF SERVICE**

I, Michael H. Bernstein, hereby certify and affirm that a true and correct copy of the attached **ANSWER** was served via ECF on this 28th day of June, 2013, upon the following:

**Andrew Scott Goodstadt**

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s/\_\_\_\_\_  
Michael H. Bernstein

Dated: New York, New York  
June 28, 2013